

Internal Revenue Service

Department of the Treasury

31 Hopkins Plaza, Baltimore, MD 21201

PERSON TO CONTACT:

CONTACT TELEPHONE NUMBER:

IN REPLY REFER TO

DATE:

MAR 26 1988

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

Information submitted with your application indicates that your were incorporated on [REDACTED] as a non-stock, non-profit corporation in [REDACTED].

Effective [REDACTED], your organization accepted conveyance of all assets, liabilities, accounts receivable, accounts payable, inventories, personal property, fixtures, equipment and publishing rights held by [REDACTED], [REDACTED] and [REDACTED], a for-profit sole proprietorship owned by [REDACTED].

In return for such conveyance, your organization agreed to provide [REDACTED] with free room and board and payment of his medical expenses for life. You have stated that [REDACTED] receives no other compensation. His food is received through donations. Your operations are conducted at a facility located at [REDACTED]. This facility is leased from an unrelated third party, [REDACTED]. A portion of this facility ([REDACTED] square feet) will be provided to [REDACTED] as personal living space. You state the value of the living space is \$[REDACTED] per month. Medical expenses to be paid on behalf of [REDACTED] include; medical checkups to monitor hypertension and diabetes, laboratory fees for blood work-ups, prescriptions and nutritional supplements. You state that the total annual allowance for medical expenses in "not expected to exceed \$[REDACTED] in value". You have stated that [REDACTED] rarely ventures beyond the doors of this facility and only for extreme emergencies or medical examinations.

You have stated, that currently, all other persons performing services for your organization are volunteers. You may in the future pay salaries. Any future salaried positions will be advertised in public sources and newspapers to secure the most qualified person for the position.

Your organization filed forms 1120 for tax years [REDACTED] and [REDACTED]. You have provided copies of these returns.

Your organization is a membership organization. Membership fees as stated in form 1023 are:

[REDACTED]

1. Individual - \$[REDACTED]
2. Family - \$[REDACTED]
3. Student - \$[REDACTED]
4. Seniors - \$[REDACTED]
5. Patron - \$[REDACTED] annual donation
6. Life Member - \$[REDACTED] one-time donation
7. Sponsor - annual donation in excess of \$[REDACTED]
8. Benefactor - \$[REDACTED] +

Members receive the following benefits:

[REDACTED]% discount on Selected Spiritual Products

[REDACTED]% discounts on Books written by [REDACTED]

One year subscription to newsletter [REDACTED]

Invitation to special events

Sponsoring Members receive the above plus:

Special Discounts on [REDACTED] and Discounts on [REDACTED]
[REDACTED] workshops.

Your members are solicited by way of brochure mailings to approximately [REDACTED] spiritually oriented persons throughout the community, distribution of your newsletter [REDACTED] and your Web Site on the Internet.

Solicitations provide descriptions and prices of products and services.

Your income reported on form 1023 consists of:

Gifts and Contributions

Membership Fees

Teaching Revenues (Fees for Workshops)

Gross Receipts (line 9)

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Your organization will conduct the following activities:

1. [REDACTED] and [REDACTED]. You have provided a schedule of fees and dates of classes of [REDACTED] and [REDACTED]. Your response to letter 1312 does not state the percentage of time or resources applied to this activity.

Your response to letter 1312 states that [REDACTED] ([REDACTED]) and [REDACTED] were first offered to the public [REDACTED] by [REDACTED] in [REDACTED]. [REDACTED] ([REDACTED]) and [REDACTED] are conducted by [REDACTED] and his assistants, [REDACTED] and [REDACTED]. Workshops consist of Prayers, Meditations, discussions, lectures, demonstrations, and practical hands-on facilitation techniques. [REDACTED] and Workshops and Intensives are conducted at three levels: Fundamentals of [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Regarding training and certification of your instructors, our letter 1312, attachment, questions 10 and 11, requested information regarding certification and training of persons providing [REDACTED]. Your response to letter 1312 states that "even at the the highest level of completion, no certificate of completing or authorization to practice [REDACTED]"

[redacted] is issued. To date, only two (2) people have been sanctioned as competent practitioners of [redacted] ([redacted]... no special fee is required before sanctioning is granted as an authorized practitioner of [redacted] [redacted]. It is simply a matter of demonstrating proficiency in the techniques involved and showing a sound comprehension of [redacted] [redacted]. Before any student is authorized to practice [redacted] [redacted] ([redacted]), he or she must exhibit to the satisfaction of the Board of Directors qualities deemed exemplary of God-Conscious Realization in the conscionable engagement of all things born of Creation." ~ [redacted]

Your instructors are not certified by [redacted] or by any other public agency, board or authority which regulates the provision of [redacted] [redacted].

Regarding your fee structure, you state in your response to letter 1312, "...the wealth of information offered was the primary basis of consideration. Secondly was the consideration of fee amounts of other, less dynamic systems and techniques of [redacted], such as [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted] classified as [redacted]. The fee structure developed was reduced from \$[redacted] in [redacted] for two (2) Two-day Workshops to \$[redacted] in [redacted]. Even so, Workshop fees are frequently deferred and waived entirely in cases where dedicated participants can not afford to make fee payments.

This information is contained nowhere within any of your newsletters, publications, membership brochure, mail order catalog or your internet Website. None of the information made available to the public states that you have ever or will defer or waive fees for persons who cannot afford to make fee payments for your [redacted] [redacted] [redacted] and [redacted].

2. Private sessions of [redacted] [redacted]. There are no set fees for private sessions. Donations for services are accepted. You state [redacted] of your total weekly time is devoted to private sessions. You state in your response to letter 1312, that private sessions of [redacted] [redacted] are offered at [redacted] Headquarters on [redacted] between [redacted] PM and [redacted] PM and on [redacted] between [redacted] PM and [redacted] PM.

You state in your response to letter 1312, that until [redacted], [redacted] conducted private sessions of [redacted] [redacted], but growing demands placed upon his time and energies made it no longer practical to offer individual sessions and he appointed [redacted] to offer individual sessions. You state that "Under [redacted] many recipients of bodywork services make no contributions for services at all, as there is no set fee for the rendering of [redacted] [redacted], unlike the fee of \$[redacted] per session under the [redacted]. However, modest donations of from \$[redacted] to \$[redacted] have been received by [redacted] for sessions of [redacted] [redacted] that last approximately [redacted] ([redacted] to [redacted] [redacted]) minutes each, and an occasional \$[redacted] donation has been recorded."

This information is contained nowhere within any of your newsletters, publications, membership brochure, mail order catalog or your internet Website. None of the information made available to the public states that you offer free private sessions of [redacted] ([redacted]).

3. Spiritual Outreach Programs to correctional institutions, inmates and newly released offenders consisting of:

- Provision of books written by [redacted] at no cost.
- Provision of your newsletter, [redacted] for free.
- Corresponding with inmates and offenders.

These services are conducted by [REDACTED] and [REDACTED]. You have provided a listing of [REDACTED] prisons which have received donations of your books, letters and correspondence. You have not provided information regarding the number of inmates corresponded with and the amount of time and resources applied to this activity for the years in question. You state that after the Spring production, these programs will be operational for several hours each day. You state that in [REDACTED], [REDACTED] of your time will be devoted for Spiritual Outreach Programs.

4. Preparation and distribution of your newsletter entitled "[REDACTED]". This publication is provided to your members and distributed for free through self-help organizations, retailers, community centers, shelters, spiritual organizations and correctional facilities. It is also available to anyone on the internet. This publication contains articles and teachings of [REDACTED] and advertisements, solicitations and fee schedules for your [REDACTED] and Intensives, and sales of books written by [REDACTED].

5. Production, distribution and sales of books through [REDACTED] via contracts with; [REDACTED], [REDACTED], [REDACTED] and through sales on the Internet. You have provided schedules of book prices. You have stated in your response to L1312, "All book prices reflect industry standards for quality book projects that take into account book size and length of comparable texts published". You have stated that the expense of publishing (which includes the newsletter) will approach nearly [REDACTED] of your annual expenditures. You state that [REDACTED] will work up to [REDACTED] hours per week in writing your books for publication.

You state in your response to letter 1312, Publishing, "Even though [REDACTED] distributes books and newsletters to correctional facilities and any inmate or private citizen who expresses interest, national book distribution is conducted by book wholesalers and distributors as detailed earlier in answer 1 of this section. At present we are unaware of any non-profit bookstores that inventory our books, as our national distributors would have direct contact with bookstores". "The kind of stores that would inventory our books at present are market specific and cater to the New Age, health conscious, spiritually oriented and ecology minded customer."

You state, "Though our books are also part of our free distribution network, our books are marketed nationally by commercial book wholesalers and distributors. Sales prices for our books are based upon market trends of books deemed reasonable comparable in size, length and production quality, as well as our unit production cost per book."

You further state, "Books are sold through national book wholesalers and distributors are discounted [REDACTED]% off the cover price. Our current text in national distribution is [REDACTED]; [REDACTED] by [REDACTED] published by [REDACTED] in [REDACTED]. The unit production costs of this text was \$[REDACTED]. Each unit sold through book distributors earned a net profit of \$[REDACTED] or approximately [REDACTED]% return on investment (Our most recent distributor receives a [REDACTED]% discount off the cover price, which provides a unit net profit of \$[REDACTED] or approximately [REDACTED]% return on investment. To date, less than [REDACTED] ([REDACTED]) copies have been sold). Future books sold through distributors can be expected to generate net profit margins between [REDACTED]% and [REDACTED]% per unit sold. Direct retail marketing typically generates profit margins between [REDACTED]% and [REDACTED]% net return on investment, as this percentage varies depending upon which of [REDACTED]'s books is considered and the corresponding production costs". "Approximately [REDACTED]% of all units sold have

been sold through bookstore accounts serviced by national book wholesalers and distributors".

6. Clothing Drives. Your organization solicits, stores and distributes more than 40 bags of clothing for the needy several times each season. Clothing drives require less than 10 percent of available time and effort.

Loving Touch Massage Body Oil (TM)
Loving Touch Cleansing Bath Oil (TM)
Deluxe Cleansing Bath Oil (TM)
Bakti, Samdi and Tingri Delux incenses (TM)
Crystals
Minerals
Cleansing Herbs and Resin Mixtures
Brass Incense Burners
Quartz pendants
Quartz Wands
Quartz Generators
Sheen Obsidian Eggs
Consecrated Rose Quartz Crystals
Blessed Herb Pots

You have not provided any information pertaining to the amount of time and resources applied to sales and distribution of spiritual products.

retail price is calculated solely on the basis of cost of raw ingredients and packaging; that is, for example, a handmade incense like [REDACTED] that sells for \$ [REDACTED] per package will have a cost of \$ [REDACTED] in raw ingredients and packaging, affording \$ [REDACTED] in profit per package or approximately [REDACTED] % mark-up over costs ([REDACTED] 's time and labor is not calculated as a factor in pricing). The pricing system offered by [REDACTED] is by design significantly different from that of commercial businesses. In a marketplace where price mark-ups typically range between [REDACTED] % and [REDACTED] % and more above wholesale costs, [REDACTED] offers many of the same products at substantially lower prices - but incurs the same or higher wholesale expenses as do commercial businesses. In so doing, [REDACTED] makes available quality Spiritual Products to many consumers that might otherwise not be able to afford quality products that enhance the experience of Spiritual Evolution. Additionally, the in-house products prepared by commercial businesses are for mass distribution and carry price mark-ups that exceed 300% over production costs. Once again by design, the in-house

[REDACTED] offered from [REDACTED] carry a significantly lower price mark-up and profit margin, and are not produced for mass distribution."

8. Spiritual Counseling. Spiritual Counseling is provided by [REDACTED] at no charge for approximately [REDACTED] to [REDACTED] hours per week.

9. Web Site Development. Your organization is presently developing full-service Web Site that will offer on-line retailing of spiritual products, and provide information about the programs, services and activities of The Portal Foundation. The purpose of the Web Site is two-fold: 1) To market and promote the spiritual products available through the [REDACTED] and [REDACTED] and 2) to promulgate The [REDACTED] and issues of Spiritual Conscience in the world community.

You state, "We project that in one (1) year's time, we will spend nearly [REDACTED] hours each week answering correspondence and processing mail-orders.

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3)

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in *Better Business Bureau v. United States*, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations

designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice or discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat the deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of the trade or business are in furtherance of the organization's exempt purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and nature of the activities which are in furtherance of one or more exempt purposes.

An organization which is organized on a nonprofit basis does not qualify for a tax exemption solely on the basis that it does not make a profit. This is not the same as exempt. The fact that an organization does not make a profit is not the controlling factor. See United States v. La Societe Francaise de Bign, Mut., 152 F. 2d 243 (9th Cir. 1945), cert. denied 327 U.S. 771; Hassett v. Associated Hospital Service Corporation, 125 F. 2d 811 (1st Cir. 1942), cert. denied 316 U.S. 672 (1942); Baltimore Health and Welfare Commissioner, 69 T. C. 554 (1978); and B. S. W. Group, Inc. v. Commissioner, 352 (1978).

Revenue Ruling 72-369, published in Cumulative Bulletin 1972-1, holds that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations does not qualify for a tax exemption under section 501(c)(3) of the Code. An organization is not exempt merely because its operations are not conducted for the purpose of making a profit. To satisfy the operational test of the Regulations, the organization's resources must be devoted to purposes that qualify exclusively as charitable within the meaning of section 501(c)(3) of the Code. The organization was not exempt because it was carrying on a trade or business of the type ordinarily carried on for profit.

Section 502 of the Internal Revenue Code provides that an organization operated for the primary purpose of carrying on a trade or business shall not be tax exempt on the grounds that all of its profits are reinvested in exempt organizations.

Section 511 of the Code imposes a tax on unrelated business taxable income of organizations exempt from Federal income tax under section 501(c)(3).

Section 512(a)(1) of the Code defines the term "unrelated business taxable income" as gross income derived by an organization from an unrelated trade or business regularly carried on by it, less the deductions directly related to such business activity.

Section 513(a) of the Code defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related to the exempt purpose of the organization (other than the need of the organization for income or funds for the use of the profits derived) to the exercise or performance by an organization of its purpose or function constituting the basis for its exemption.

Section 1.513-1(d)(2) of the Regulations provides that a trade or business is "related" to exempt purposes only where the conduct of the business has a causal relationship to the achievement of any exempt purpose. A trade or business is "substantially related" for purposes of section 513, only if the relationship is a substantial one. Thus, for the conduct of a trade or business to be related to exempt purposes, the relationship must be a substantial one.

business from which a particular amount of gross income derived to be substantially related to purposes for which exemption is granted, the production or distributions of goods or the performance of the services for which the gross income is derived must contribute importantly to the accomplishment of those purposes.

In Better Business Bureau v. United States, 326 U.S. 279-283, (1945), the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show (1) that it is organized and operated exclusively for religious, or charitable purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d. 632, (7th Cir. 1963).

Revenue Ruling 66-178, published in Cumulative Bulletin 1966-1, page 138, held that sponsoring art exhibits was an educational pursuit when an organization exhibited works of unknown artists to the public. There was no selling at the exhibits. Membership in the organization is not required to exhibit.

Revenue Ruling 71-395, published in Cumulative Bulletin 1971-2, on page 228, describes a cooperative art gallery formed and operated by a group of member artists for the purpose of exhibiting and selling the members' works of art. The gallery was open six days of the week and a sales commission was retained to cover costs of the operation. This gallery was held not to be exempt as it served the private purpose of its members, even though the exhibition and sale of paintings might have been educational activities in other respects.

The element of public benefit is a necessary condition of legal charity. If the purposes or operations of an organization are such that a private individual who is not a member of a charitable class receives other than an insubstantial or indirect economic benefit therefrom, such activities are deemed repugnant to the idea of an exclusively charitable purpose.

The "commensurate test" of Revenue Ruling 64-182, published in Cumulative Bulletin 1964-1, on page 186, requires that a charitable organization with fund raising (unrelated trade or business) income as its principal source of income must carry on a charitable program of grants and contributions commensurate with its financial resources.

The "commensurate test" requires that organizations have a charitable program that is both real and, taking the organization's circumstances and financial resources into account, substantial. Therefore, an organization that raises funds for charitable purposes but consistently uses virtually all its income for administrative and promotional expenses with little or no distribution to charity cannot reasonably argue that its distributions are commensurate with its financial resources and capabilities.

In an organization which applies for recognition of exemption has the burden of showing that it clearly meets all the requirements of the particular Code section under which it has applied. See Kenner v. Commissioner, 318 F. 2d 632 (7th Cir. 1963), and Cleveland Chiropractic College v. Commissioner, 312 F. 2d 806, (8th Cir. 1963).

In Mabee Petroleum Corporation v. United States, 203 F. 2d 872, 877 (5th Cir. 1953), the court stated that in determining whether the salaries and other benefits paid to an organization to its officers are reasonable, all facts and

circumstances must be considered. One factor to consider is whether comparable services would cost as much if obtained from an outside source in an arm's length transaction.

Revenue Ruling 76-91, published in Cumulative Bulletin 1976-1, on page 140, provides that where the purchaser is controlled by the seller or there is a close relationship between the two at the time of the transaction, the presumption is that the agreement cannot be made because the elements of an arm's length transaction are not present.

Your compensation arrangement which includes payment of the personal medical expenses and provision of housing facilities to your founder and controlling director lacks the elements of an arm's length transaction since the agreements are set by the recipients rather than through an independent third party based on objective criteria. This arrangement is similar to the one discussed in the cited precedent where the court stated that this compensation arrangement permitted the net earnings to inure to the benefit of private individuals. The court also stated that in this type of situation, the organization served private rather than public interests as required by section 501(c)(3) of the Internal Revenue Code.

In Bubbling Well Church of Universal Love v. Commissioner, U.S. Court of Appeals 9th Circuit No. 80-7358 11-27-81 affirmed 74 TC 531, the tax court reviews an organization that states it is a church operating exclusively for religious purposes. The church was established by three members of one family, who also serve as the sole members of the Board of Trustees and/or directors. The organization had no affiliation with any denomination or ecclesiastical body and was not subject to any outside influence in the control of the organization's affairs.

The organization receives income of approximately \$61,000 during a one year period. Of this amount approximately \$37,000 was directly returned to the family in the form of living allowance, parsonage allowance, medical expenses, medical insurance and travel expenses. This amounted to 61 percent of the organization's income that directly benefited the founding family.

The court stated that under the circumstances described, the family was in position to perpetuate control of the organization's operations indefinitely, prepare its budget and had complete control of the organization's finances, made the decisions on how the funds were spent. Since the organization had no connection with any denomination or outside body, it was not subject to any outside influence in the conduct of the church's affairs.

Concerning the amount of compensation paid to family members, the court stated that the applicant organization has the burden of proving that the compensation paid its officers is reasonable and comparable to salaries paid for similar positions within a particular industry. In denying exemption to the organization, the court stated that the organization had not shown that no part of the net earnings did not inure to the family members and that the organization was operated for the private benefit of the family rather than for public purposes.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980) an organization formed to operate as a church. The founders and incorporators had total control over the management of the organization's affairs and determined how the organization's money was spent. Services for the organization were held in the personal residence of the founder who held title to all property, both real and personal, in his own name. The organization also showed liability for an automobile loan and expenses for utilities and other items that were directly related to the personal residence where the services were held.

The court ruled that although the organization was serving religious and charitable purposes, it also served to benefit the founders of the organization since few disbursements were shown to be used exclusively for exempt purposes. It was also noted that when an organization's affairs are controlled by a small group and they are recipients of funds distributed by the organization, prohibited inurement is strongly suggested. The court concluded that this organization was not entitled to exemption since it was not operated exclusively for an exempt purpose and served the private interests of its founders rather than public purposes.

Based on the evidence submitted, we have determined that you have not met your burden of proof to show that you are operated exclusively for an exempt purpose and that you serve the private interests of your creators and founders. In addition, like the organization described in Bubbling Well Church, the amounts shown in your statements of income and expenses for the care of needy, sick, homeless or imprisoned which are the traditional beneficiaries of the ministrations of churches, are insubstantial in comparison to expenses pertaining to the operation and sale of your commercial products and message therapy services and payments of salaries and other personal living expenses of your founder and director. You have not established that the organization qualifies for exemption.

In Revenue Ruling 67-4, published in Cumulative Bulletin 1977-1, on page 121, the Service recognized four criteria indicating that publishing activities are directed to the attainment of purposes specified in section 501(c)(3). These criteria are: (1) The content of the publication must be "educational"; (2) The preparation of materials must follow methods generally accepted as "educational" in character; (3) The distribution of the materials must be necessary or valuable in achieving the organization's exempt purposes; and (4) The manner in which distribution is accomplished must be distinguishable from ordinary commercial publishing practices.

In analyzing the factors which distinguish whether an organization's activities are "sufficiently distinguishable from ordinary commercial practices" to qualify as carrying out an exempt purpose, the following factors are considered:

- (1) The only activity of the organization is publishing with the organization using standard commercial techniques to generate profits.
- (2) The publications are priced "competitively" with other commercial concerns or to return a profit.
- (3) Conducting an enterprise in a manner in which all participants expect to receive a profit.
- (4) Publishing materials almost exclusively for sale with only a de minimis amount of materials donated to charity.

Revenue Ruling 77-4 published in Cumulative Bulletin 1977-1, on page 141, provides an example of an ordinary commercial publishing operation. A non-profit corporation published a weekly newspaper which contained local, national and world news, editorials and paid advertising. The newspaper's editorial content focused on matters of interest to a particular ethnic group. The organization never realized a profit from its operations. The organization was supported by advertising and sales of subscriptions. The revenue ruling also notes that the employees did not have any particular qualifications that would serve to distinguish them from that of an ordinary

commercial publishing enterprise.

The revenue ruling held that this organization's only activities are preparing and publishing a newspaper, soliciting advertising and selling subscriptions to that newspaper in a manner that is indistinguishable from ordinary commercial publishing practices. Therefore, it is not operated ~~exclusively~~ for charitable and educational purposes and thus does not qualify for exemption under section 501(c)(3).

Compare Revenue Ruling 68-306, published in Cumulative Bulletin 1968-1, on page 257, which holds that a non-profit organization publishing a newspaper primarily devoted to news, articles and editorials related to church and religious matters qualifies for exemption under section 501(c)(3) since it is advancing religion by disseminating information and not serving a commercial purpose.

In Ralph H. Eaton Foundation v. Commissioner, 55-1, USIC, 248, the court ruled that an organization formed for the purpose of promoting religious and charitable purposes, was not entitled to exemption from federal income tax under section 501(c)(3), where it engaged in various commercial pursuits such as selling sports clothing and operating a construction business. The court stated that the organization was organized and operated for two purposes (1) to engage in a commercial business for profit and (2) to turn over the profits realized from those commercial activities to charitable organizations. The court stated that that "the second purpose is charitable; the first purpose is clearly not. To qualify for exemption, the corporation must be organized and operated exclusively for charitable, religious and other stated purposes."

Your organization does not turn over all of it's profits to other charitable organizations or persons who meet the definition of a charitable class. However, even if your organization did turn over all of it's profits to such organizations or persons, it is still engaged in a commercial business.

In American Institute for Economic Research v. United States, 1962-2, USTC, 9466, the court considered the issue of whether an organization was operating exclusively for educational rather than business purposes. In this case, the organization engaged in publication of periodicals which gave investment advice, an activity commonly associated with a commercial business. Many of the publications produced by this organization were intended to provide investment advice to the public for a fee. The type of activities provided by this organization were held to be indicative of a business and the organization's primary purpose was held to be commercial rather than exclusively educational.

In Scripture Press Foundation v. United States, 61-1, USTC 9195, the court was asked to consider whether the activities of a certain publishing company were primarily educational and charitable rather than business activities with a commercial purpose. The organization sold its publications at a price above their actual cost, or at a price that included a markup which established a profit. The court indicated in this case that the existence of profits gives some evidence that a business purpose rather than an educational purpose is primary.

In B.S.W. Group v. Commissioner, 70 T.C. 532 359 (1978), the court held that an organization that provided management and consulting services to nonprofit organizations at fees set to cover costs and yield a 10.8 percent profit was not organized and operated exclusively for charitable and educational purposes. Furnishing the services at cost or above cost lacked the donative element to be considered charitable. The court also stated that the presence of substantial profits constitutes evidence that an organization is operating

for a commercial rather than exclusively educational purpose.

In International Postgraduate Medical Foundation v. Commissioner, 56 TCM 1 T.C. Memo 1989-36, the founder of an exempt organization and for-profit entity was in a position to use the exempt entity to benefit his for-profit business. The exempt organization contracted with the for-profit business to perform services on its behalf. The court stated that when a for-profit entity receives benefits from an exempt organization, the exempt organization is not operated exclusively for charitable or any other purposes no matter how many exempt activities it conducts.

The court further stated that it thus becomes necessary to determine the correctness of the educational characterization of the organization's operations, since it is apparent that an important if not primary purpose of the organization is to promote a profitable business purpose. The court stated that the substantial sales activities of this organization reflect a business purpose.

Whether a purpose is educational has been interpreted by the courts to be more than conveying information or providing instruction. The purpose must promote instruction or training which is intended to enable the individual to improve and develop his capabilities or to instruct the public on subjects useful to the individual and beneficial to the community.

From our review of your activities, you are continuing to conduct as your primary activity, those profit making activities which were previously conducted on a for-profit, commercial basis by your founder, [REDACTED]. By operating in this manner, your operations are indistinguishable from an ordinary commercial business concern and serve a substantial non-exempt commercial and business purpose. Your activities are similar to the organization discussed in Revenue Ruling 67-4 where four factors are considered when determining whether an organization is operating in a manner indistinguishable from a trade or business.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Betty's Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court, the United States stated, "This plainly means that the presence of a significant non-educational purpose, if substantial in nature, will destroy the exempt status regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of Section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operations of such trade or business are in furtherance of exempt purposes described in IRC section 501(c)(3) and if the organization is not organized and operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513.

Section 1.513-1(b) of the Regulations provide that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or the performance of services. It is further provided that activities of producing or distributing goods or services from which a particular amount of gross income is derived do not lose their identity as a trade or business merely because they are carried on within a larger complex of other ends.

which may or may not be unrelated to the exempt purpose of the org

In Randall Foundation, Inc. v. Roddell, 244 2d 803 (8th Cir. 1957) organization was established to operate as a nonprofit charitable. The purpose of the corporation was the promotion and advancement of charitable, religious and educational projects. Income to the corp came from shares of stock contributed to it by its founder and his. Many of these shares were sold by the Foundation immediately after the stock contributions. The Foundation operated for an entire year only activity being the marketing and trading of securities.

The court determined that since this organization was conducting business for profit, it was not operated exclusively for charitable. The court further held that "a corporation which in its inception trade, business, or speculation, and has a vague charitable design come within the terms of the statute."

In Scripture Press Foundation v. Commissioner, 61-1, USTC, 9195, analyzed whether the sale of religious literature qualified as an activity for the purposes of obtaining exemption under section 501(c)(3). In this case, the foundation sold large amounts of religious literature. In its first year of operations, the foundation showed gross income of \$1,610,817 from sales and made \$21,836 in expenditures for religious and educational programs. This same pattern of accumulating capital continued for several years. At the end of an eight year period, the foundation's gross income from sales was \$1,610,817 with expenditures for religious educational programs of \$21,836.

The court stated that "We think the enormity of contrast between the foundation's gross income from sales each year and what it has expended on its educational programs reveals that the sales of religious literature is its primary activity. This primary activity serves a business rather than an exempt purpose."

In Fides Publishers Association v. United States, 263 F. Supp. 91, a corporate publisher of religious books priced at commercial levels. Its moderate but consistent operating profits were held not to be exempt. The court stated that although "the publishing activities further the purpose of educating the lay apostolate," nevertheless, there was a substantial nonexempt purpose - "the publication and sale of religious literature at a profit".

Notwithstanding the fact that your organization will distribute a newsletter, will provide limited quantities of its books to its members to reduce its profit margins, based upon all of the facts provided, your organization is engaged to a substantial extent in a commercial activity consisting of sales of books and spiritual products and the provision of [REDACTED] (b)(7)(C) [REDACTED]. The primary purpose of your organization is the carrying on of commercial type business activities rather than conducting exclusively religious, educational or charitable activities.

The inurement proscription contained in Regulations 1.501(c)(3)-1 states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Inurement is likely to arise if financial benefit represents a transfer of the organization's funds or resources to an individual solely by virtue of the individual's relationship with the organization, and without regard to the accomplishment of the organization's exempt purposes.

Inurement of income is strictly forbidden under section 501(c)(3).

[REDACTED]

[REDACTED], cold water, or [REDACTED], for the purpose of
[REDACTED], enhancing [REDACTED]
[REDACTED], or [REDACTED].

[REDACTED] provides that any individual who practices [REDACTED]
in [REDACTED] without certification, is guilty of a misdemeanor and
on conviction shall be subject to a fine not exceeding \$5,000 or imprisonment
for not more than 1 year, or both.

[REDACTED] has and continues to offer [REDACTED]
Services as defined by [REDACTED]. These services
are provided by the following officers of [REDACTED]:

[REDACTED]
[REDACTED]
[REDACTED]

None of the above individuals has been certified to practice massage therapy
by the [REDACTED]

None of the above individuals has an application for certificate pending
before the [REDACTED]

An organization that is engaged in an illegal activity regardless of its scope
cannot meet the second part of the three part test outlined above and
therefore, cannot qualify for exemption under IRC section 501(c)(3).

Violation of constitutionally valid laws is inconsistent with exemption under
section 501(c)(3). Exempt purposes may be equated with the public good and
violations of law oppose the the public good, thus these violations cannot be
in furtherance of exempt purposes. In fact, illegal acts increase the burdens
of government and therefore, work against the charitable goals listed in
Internal Revenue Regulations 1.501(c)(3)-1(d)(2).

Based upon the foregoing facts, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

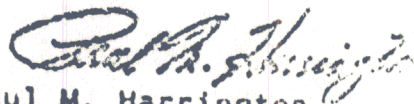
If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,



Paul M. Harrington
District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]